

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALIBU MEDIA, LLC,

Plaintiff,

CASE NO. 1:12-CV-617

v.

HON. ROBERT J. JONKER

JEFFREY ROY,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES**

On October 19, 2012, Plaintiff sued Defendant for copying and distributing a website containing several of Plaintiff's copyrighted movies. (Am. Compl., doc. # 13, at ¶ 2.) Defendant timely answered, denying that he had ever copied or distributed Plaintiff's movies. (Answer, doc. # 23, at ¶ 41). Defendant also asserted 23 separate affirmative defenses to Plaintiff's claims. (*Id.* at 11-13.) Plaintiff subsequently filed the motion now before the Court, asking the Court to strike each of Defendant's affirmative defenses. (Pl.'s Mot. to Strike Def.'s Affirmative Defenses, doc. # 31, at 1.) At the outset, Defendant has voluntarily withdrawn twelve of the 23 affirmative defenses asserted in his answer. (Def.'s Resp. to Pl.'s Mot. to Strike Affirmative Defenses, doc. # 32, at 1; Ex. 1, doc. # 32-1, at 1.) With respect to those defenses – contributory negligence, discharge in bankruptcy, estoppel, unconscionability, prior license, failure to state a claim, unconstitutionally excessive statutory damages, laches, waiver, prior recovery, misuse of Copyright Act, and unconstitutionally excessive damages – Plaintiff's Motion is moot. With respect to the other affirmative defenses set out in his Answer, Defendant has articulated a good faith legal and factual

basis for each. Whether Defendant ultimately prevails on his affirmative defenses depends, at least in part, on the answer to currently unresolved fact issues. Discovery and dispositive motions are the best way to resolve those issues.

ACCORDINGLY, IT IS ORDERED that Plaintiff's Motion to Strike Defendant's Affirmative Defenses (doc. # 31) is **DENIED**.

Dated: February 14, 2013

/s/ Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE